

EXHIBIT “A”

AMENDED

SUMMONS
(CITACION JUDICIAL)FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**NOTICE TO DEFENDANT: (Aviso a Acusado)**

Pacific Gas And Electric Company, Pauley Construction, Inc.,
Traffic Solutions, Inc., Adelphia Telecommunications Co.,
Inc., SBC Telecommunications, Inc., Mobile Tool International,
Inc., dba Telata, County of Mendocino, State of California,
Pacific Bell Telephone Company, Pacific Telesis Group, SBC
Operations, Inc. and Does 1 to 50

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)

Sifa Tuiaki and Lupe Tuiaki

You have 30 CALENDAR DAYS after this
summons is served on you to file a typewritten
response at this court.

A letter or phone call will not protect you; your
typewritten response must be in proper legal form
if you want the court to hear your case.

If you do not file your response on time, you may
lose the case, and your wages, money and
property may be taken without further warning
from the court.

There are other legal requirements. You may want
to call an attorney right away. If you do not know
an attorney, you may call an attorney referral
service or a legal aid office (listed in the phone
book).

Después de que le entreguen esta citación judicial usted
tiene un plazo de 30 DÍAS CALENDARIOS para presentar
una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá
protección; su respuesta escrita a máquina tiene que
cumplir con las formalidades legales apropiadas si usted
quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder
el caso, y le pueden quitar su salario, su dinero y otras
cosas de su propiedad sin aviso adicional por parte de la
corte.

Existen otros requisitos legales. Puede que usted quiera
llamar a un abogado inmediatamente. Si no conoce a un
abogado, puede llamar a un servicio de referencia de
abogados o a una oficina de ayuda legal (vea el directorio
telefónico).

CASE NUMBER (Número del caso)
CGC-03-419761

The name and address of the court is: (El nombre y dirección de la corte es)

SAN FRANCISCO COUNTY SUPERIOR COURT
400 McALLISTER STREET

SAN FRANCISCO, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

TIMOTHY G. TIETJEN, SB 104975
ROUDA, FEDER, TIETJEN & ZANOBINI
44 MONTGOMERY STREET, SUITE 4000
SAN FRANCISCO, CA 94104

415/398-5398 415/398-8169

GORDON PARK II

Clerk, by
(Aclurial)

Cristina Bautista

Deputy
(Delegado)DATE:
(Fecha)

SEP 5 - 2003

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

under.

- ☒ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other:

4. ☐ by personal delivery on (date):

- ☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.80 (individual)

Legal
Solutions

(See reverse for Proof of Service)

9/5/02 F

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and Address) TIMOTHY G. TIETJEN, SB 104975 ROUDA, FEDER, TIETJEN & ZANOBINI 44 MONTGOMERY STREET, SUITE 4000 SAN FRANCISCO, CA 94104 TELEPHONE NO: 415/398-5398 FAX NO. (OPTIONAL) 415/398-8169 E-MAIL ADDRESS (OPTIONAL): ATTORNEY FOR (Name) PLAINTIFFS		FOR COURT USE ONLY ENDORSED FILED San Francisco County Superior Court SEP 5 - 2003 GORDON PARKILL, Clerk BY: BRISTINE E. BAILEY Deputy Clerk	
NAME OF COURT: SAN FRANCISCO COUNTY SUPERIOR COURT STREET ADDRESS: 400 MCALLISTER STREET MAILING ADDRESS CITY AND ZIP CODE: SAN FRANCISCO, CA 94102 BRANCH NAME:			
PLAINTIFF: SIFA TUIAKI, and LUPE TUIAKI DEFENDANT: PACIFIC GAS AND ELECTRIC COMPANY, et al. (SEE ATTACHMENT 1 for additional defendants) <input checked="" type="checkbox"/> DOES 1 TO 100			
COMPLAINT — Personal Injury, Property Damage, Wrongful Death <input checked="" type="checkbox"/> AMENDED (Number): FIRST Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input type="checkbox"/> OTHER (specify): <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Other Damages (specify): LOSS OF CONSORTIUM			
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited		CASE NUMBER: CGC-03-419761	

1. PLAINTIFF (name): **SIFA TUIAKI, and LUPE TUIAKI**

alleges causes of action against DEFENDANT (name): **See Attachment 2**

2. This pleading, including attachments and exhibits, consists of the following number of pages: **12**

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
 (2) ☐ an unincorporated entity (describe):
 (3) ☐ a public entity (describe):
 (4) ☐ a minor ☐ an adult

(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 (b) ☐ other (specify):

(5) ☐ other (specify):

b. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
 (2) ☐ an unincorporated entity (describe):
 (3) ☐ a public entity (describe):
 (4) ☐ a minor ☐ an adult

(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 (b) ☐ other (specify):

(5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Complaint — Attachment 3.

SHORT TITLE: TUIAKI, et al. v. PACIFIC GAS AND ELECTRIC CO., INC., et al.

CASE NUMBER

CGC-03-419761

4. ☐ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name): PACIFIC GAS AND ELECTRIC COMPANY

- (1) ☒ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):
 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):

b. ☒ except defendant (name): PAULEY CONSTRUCTION, INC.

- (1) ☐ a business organization, form unknown
 (2) ☒ a corporation
 (3) ☐ an unincorporated entity (describe):
 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):

c. ☒ except defendant (name): MOBILE TOOL INTERNATIONAL, INC., dba TELSTA

- (1) ☐ a business organization, form unknown
 (2) ☒ a corporation
 (3) ☐ an unincorporated entity (describe):
 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):

d. ☒ except defendant (name): ADELPHIA TELECOMMUNICATIONS, INC.

- (1) ☐ a business organization, form unknown
 (2) ☒ a corporation
 (3) ☐ an unincorporated entity (describe):
 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):

☒ Information about additional defendants who are not natural persons is contained in Complaint — Attachment 5.

6. The true names and capacities of defendants sued as Does are unknown to plaintiff.

7. ☐ Defendants who are joined pursuant to Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

- a. ☐ at least one defendant now resides in its jurisdictional area.
 b. ☒ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
 c. ☐ injury to person or damage to personal property occurred in its jurisdictional area.
 d. ☐ other (specify):

9. ☒ Plaintiff is required to comply with a claims statute, and

- a. ☒ plaintiff has complied with applicable claims statutes, or
 b. ☐ plaintiff is excused from complying because (specify):

SHORT TITLE: TUIAKI, et al. v. PACIFIC GAS AND ELECTRIC
COMPANY, et al.

CASE NUMBER

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10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☐ Motor Vehicle
- b. ☒ General Negligence
- c. ☐ Intentional Tort
- d. ☒ Products Liability
- e. ☒ Premises Liability
- f. ☐ Other (specify):

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☒ loss of earning capacity
- g. ☒ other damage (specify):

Loss of Consortium as to Lupe Tuiaki, emotional distress, prejudgment interest, costs and such other relief as awarded by the court.

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are
- a. ☐ listed in Complaint — Attachment 12.
 - b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. PLAINTIFF PRAYS for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages
- b. The amount of damages is (you must check (1) in cases for personal injury or wrongful death):
- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date: September 3, 2003

TIMOTHY G. TIETJEN
(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

Page 3 of 3

E NUMBER

SHORT TITLE: TUIAKA, et al. v. PACIFIC GAS AND ELECTRIC
COMPANY, et al.

ATTACHMENT (Number): 1

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(Add pages as required)

(This Attachment may be used with any Judicial Council form.)

DEPENDANTS: PAULEY CONSTRUCTION, INC., TRAFFIC SOLUTIONS, INC., ADELPHIA
TELECOMMUNICATIONS CO., INC., SBC TELECOMMUNICATIONS, INC., MOBILE TOOL
INTERNATIONAL, INC., dba TELSTA, COUNTY OF MENDOCINO, STATE OF CALIFORNIA,
PACIFIC BELL TELEPHONE COMPANY, PACIFIC TELESTIS GROUP, SBC OPERATIONS, INC.,
and DOES 1 TO 100

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under
penalty of perjury.)

ATTACHMENT

Cal. Rules of Court, Rule 9.82

SHORT TITLE: TUIAKI, et al. v. PACIFIC GAS AND ELECTRIC COMPANY, et al.

FILE NUMBER
CGC-03-419761

ATTACHMENT (Number): 2

Page 5 of 12
(Add pages as required)

(This Attachment may be used with any Judicial Council form.)

1. PLAINTIFF: SIFA TUIAKI, AND LUPE TUIAKI alleges causes of action against DEFENDANTS: PACIFIC GAS AND ELECTRIC COMPANY, PAULEY CONSTRUCTION, INC., TRAFFIC SOLUTIONS, INC., ADELPHIA TELECOMMUNICATIONS CO., INC., SBC TELECOMMUNICATIONS, INC., MOBILE TOOL INTERNATIONAL, INC., d/b/a TELSTA, COUNTY OF MENDOCINO, STATE OF CALIFORNIA, PACIFIC BELL TELEPHONE COMPANY, PACIFIC TELESIS GROUP, SBC OPERATIONS, INC., and DOES 1 TO 100

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

ATTACHMENT

SHORT TITLE:

TUIAKI, et al. v. PACIFIC GAS AND ELECTRIC COMPANY, et al.

CASE NUMBER

CGC-03-419761

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FIRST

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): SIFA TUIAKI, and LUPE TUIAKI

alleges that defendant (name): PACIFIC GAS AND ELECTRIC COMPANY, COUNTY OF MENDOCINO, STATE OF CALIFORNIA and

☒ Does 1 to 10

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff
 on (date): May 1, 2002

at (place): Highway 1, two miles north of Fort Bragg in Mendocino County.

(description of reasons for liability):

1. On the above date, plaintiff Sifa Tuiaki was working for S.G. Barber Construction, Inc., installing fiber optic cable on a project in Mendocino county. In the process of performing this work, plaintiff and/or his equipment came in contact with a 12,000 volt electrical line. As a result of plaintiff's contact with the high voltage lines, plaintiff suffered catastrophic electrical burn injuries which resulted in the amputation of both arms, severe burn injuries about his body, and paraplegia.

2. Plaintiff contends that Pacific Gas and Electric Company, County of Mendocino, State of California and Does 1 to 10 negligently owned, constructed, inspected, repaired and maintained the above referenced electrical lines; negligently failed to keep the electrical lines clear of obstacles, other cable lines and trees; negligently failed to demargize the electrical lines or insulate them from the risk of contact by workers who were known by defendant to be working in close proximity to the electrical lines; and negligently failed to warn workers and plaintiff or safeguard them against the foreseeable risk of a worker coming into contact with the above referenced electrical lines. As a proximate cause of defendant's negligence, plaintiff suffered the severe injuries and damages described above.

SHORT TITLE: TUIAKA, et al. v. PACIFIC GAS AND ELECTRIC COMPANY, et al.

CASE NUMBER

CGC-03-419761

SECOND

(1-1000)

CAUSE OF ACTION - Premises Liability

Page 7

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

Prem.L-1. Plaintiff (name): SIFA TUIAKA, and LUPE TUIAKI
alleges the acts of defendants were the legal (proximate) cause of damages to plaintiff.
On (date): May 1, 2002 plaintiff was injured on the following premises in the following

fashion (description of premises and circumstances of injury):

Live power lines crossing Highway 1 several miles north of Cleone and Fort Bragg in Mendocino County, California. Said power lines were improperly installed and maintained. Furthermore, said lines were hidden and obscured by foliage and shrubbery. The existence of said lines was not noted, or improperly noted on maps of the vicinity provided or prepared by defendants. The existence of said power lines and the dangerous condition they represented were known to defendants who had reasonable opportunity and means to eliminate the hazard prior to the incident in which plaintiff was electrocuted.

Prem.L-2. ☐ Count One-Negligence The defendants who negligently owned, maintained, managed and operated the described premises were (names): Pacific Gas & Electric Company, Pacific Televis Group, Pacific Bell Telephone Co., SBC Telecommunications, Inc., County of Mendocino, State of California
☒ Does 1 to 10

Prem.L-3. ☐ Count Two-Willful Failure to Warn (Civil Code section 846) The defendant owners who willfully or maliciously failed to guard or warn against a dangerous condition, use, structure, or activity were (names):
☐ Does to
Plaintiff, a recreational user, was ☐ an invited guest ☐ a paying guest

Prem.L-4. ☒ Count Three-Dangerous Condition of Public Property The defendants who owned public property on which a dangerous condition existed were (names): County of Mendocino and State of California
☒ Does 11 to 20
a. ☒ The defendant public entity had ☒ actual ☒ constructive notice of the existence of the dangerous condition in sufficient time prior to the injury to have corrected it.
b. ☐ The condition was created by employees of the defendant public entity.

Prem.L-5. a. ☒ Allegations about Other Defendants The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names): Pacley Construction, Inc., Adelphi Telecommunications, Inc., Pacific Gas & Electric Company, SBC Telecommunications, Inc., Pacific Televis Group, County of Mendocino, State of California, SBC Operations, Inc.
☒ Does 21 to 30
b. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for their liability are
☐ described in attachment Prem.L-5.b ☐ as follows (names):

SHORT TITLE:
TUIAKI, et al. v. PACIFIC GAS AND ELECTRIC COMPANY, et al

CASE NUMBER:
CGC-08-419761

THIRD

CAUSE OF ACTION - General Negligence

Page 8

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): SIFA TUIAKI, and LUPE TUIAKI

alleges that defendant (name): PAULEY CONSTRUCTION, INC. ADELPHIA TELECOMMUNICATIONS CO., SBC TELECOMMUNICATIONS, INC., PACIFIC TELESIS GROUP, PACIFIC BELL TELEPHONE COMPANY, COUNTY OF MENDOCINO, STATE OF CALIFORNIA, SBC OPERATIONS, INC.

☒ Does 31 to 40

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff.

on (date): May 1, 2002

at (place): Highway 1, two miles north of Fort Bragg in Mendocino County.

(description of reasons for liability):

1. On the above date, plaintiff Sifa Tuiaki was working for S.G. Barber Construction, Inc., installing fiber optic cable on a project in Mendocino county. In the process of performing this work, plaintiff and/or his equipment came in contact with a 12,000 volt electrical line. As a result of plaintiff's contact with the high voltage lines, plaintiff suffered catastrophic electrical burn injuries which resulted in the amputation of both arms, severe burn injuries about his body, and paraplegia.

2. Plaintiffs are informed and believe, and thereon allege, that defendant Pauley Construction, Inc., and Does 31 through 40 negligently supervised, planned, managed, controlled, coordinated and directed the work being performed by plaintiff's employer, S.G. Barber, and plaintiff on this construction project. In particular, defendants negligently retained control over the safety precautions to be implemented to protect plaintiff and other construction workers from being injured on this project. Further, defendants failed to warn plaintiff and his coworkers of the work hazards associated with the installation of fiber optic cable in close proximity to high voltage electrical lines.

3. As a proximate cause of defendant's negligence, plaintiff suffered the severe injuries and damages described above.

SHORT TITLE:

TUIAKI, et al. v. PACIFIC GAS AND ELECTRIC COMPANY, et al

CASE NUMBER

CGC-03-419761

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CAUSE OF ACTION - General Negligence

FOURTH

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): SIFA TUIAKI, and LUPE TUIAKI

alleges that defendant (name): TRAFFIC SOLUTIONS, INC., and

☒ Does 41 to 50

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): May 1, 2002

at (place): Highway 1, two miles north of Fort Bragg in Mendocino County.

(description of reasons for liability):

1. On the above date, plaintiff Sifa Tuiaki was working for S.G. Barber Construction, Inc., installing fiber optic cable on a project in Mendocino county. In the process of performing this work, plaintiff and/or his equipment came in contact with a 12,000 volt electrical line. As a result, of plaintiff's contact with the high voltage lines, plaintiff suffered catastrophic electrical burn injuries which resulted in the amputation of both arms, severe burn injuries about his body, and paraplegia.

2. Plaintiffs are informed and believe, and thereon allege, that Traffic Solutions, Inc. and Does 11 to 15 were hired to provide safety precautions and traffic control services for the construction project upon which plaintiff was working when injured. In particular, plaintiffs are informed and believe and thereon allege that defendants negligently failed to provide spotters, flagmen, and traffic control services and precautions necessary to prevent construction equipment and/or workers from coming into contact with high voltage electrical lines.

3. As a proximate cause of defendant's negligence, plaintiff suffered the severe injuries and damages described above.

SHORT TITLE: TUIAKI, et al. v. PACIFIC GAS AND ELECTRIC COMPANY, et al.

CASE NUMBER:

CGC-03-419761

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FIFTH

(number)

CAUSE OF ACTION - Products Liability

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

Plaintiff (name): SIFA TUIAKI, and LUPE TUIAKI

Prod.L-1. On or about (date): May 1, 2002

plaintiff was injured by the following product
A Telsta T40C Aerial Lift. Plaintiff Sifa Tuiaki was injured while operating the described product when he and/or his equipment came in contact with a high voltage powerline on Highway 1, two miles north of Fort Bragg in Mendocino County.

Prod.L-2. Each of the defendants knew the product would be purchased and used without inspection for defects. The product was defective when it left the control of each defendant. The product at the time of injury was being

☒ used in the manner intended by the defendants.

☒ used in a manner that was reasonably foreseeable by defendants as involving a substantial danger not readily apparent. Adequate warnings of the danger were not given.

Prod.L-3. Plaintiff was a

☐ purchaser of the product

☐ bystander to the use of the product.

☒ user of the product.

☐ other (specify):

PLAINTIFF'S INJURY WAS THE LEGAL (PROXIMATE) RESULT OF THE FOLLOWING:

Prod.L-4. ☐ Count One-Strict liability of the following defendants who

a. ☒ manufactured or assembled the product (names): Mobile Tool International, Inc., dba Telsta

☒ Does 51 to 55

b. ☒ designed and manufactured component parts supplied to the manufacturer (names): Mobile Tool International, Inc., dba Telsta

☒ Does 56 to 60

c. ☒ sold the product to the public (names): Mobile Tool International, Inc.

☒ Does 61 to 65

Prod.L-5. ☐ Count Two-Negligence of the following defendants who owed a duty to plaintiff (names): Mobile Tool International, Inc., dba Telsta

☒ Does 66 to 70

Prod.L-6. ☐ Count Three-Breach of warranty by the following defendants (names): Mobile Tool International, Inc., dba Telsta

☒ Does 71 to 75

a. ☒ who breached an implied warranty

b. ☒ who breached an express warranty which was

☒ written ☒ oral

Prod.L-7. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are

☐ listed in Attachment-Prod.L-7 ☐ as follows:

CAUSE OF ACTION - Products Liability

Legal
Solutions
& Plus

CCP 425.12

PETITIONER/PLAINTIFF: SIFA TUIAKI, and LUPE TUIAKI	CASE NUMBER:
RESPONDENT/DEFENDANT: PACIFIC GAS AND ELECTRIC COMPANY, et al.	CGC-03-419761

Attachment to Complaint
Continued

Page 11

SIXTH CAUSE OF ACTION
(Loss of Consortium)

1. Plaintiffs reallege and incorporate herein each and every allegation set forth above.

2. At all times relevant, plaintiff Lupe Tuiaki was and is the lawful spouse of plaintiff Sifa Tuiaki.

3. As a result of the conduct of defendants described above, plaintiff Sifa Tuiaki sustained injuries which would foreseeably endanger or destroy plaintiff Lupe Tuiaki's beneficial enjoyment of her marital relationship and consortium with plaintiff Sifa Tuiaki.

4. As a direct and proximate result of the negligent conduct of defendants, and each of them, plaintiff Lupe Tuiaki has been deprived of the love, companionship, affection, society, sexual relations, and solace of plaintiff Sifa Tuiaki and has suffered damages thereby.